

Washington, D.C. 20505

27 March 1981

OS REGISTRY

FILE Legal &

X Cammell 14/5

X Perry

DCIDS

1/7

1/19

X Sec 18

MEMORANDUM FOR: Members, DCI Committee on Compartmentation

FROM:

Chairman

SUBJECT: Policy Concerning Control of Sensitive Compartmented Information (SCI) Released to Contractors or Consultants and to Companies Under Foreign Ownership/Dominance

1. The Committee on Compartmentation has endorsed the need for a common policy on limitation of SCI access to contractor companies under foreign ownership, control or influence.

2. The guidelines for release of SCI to contractors are adequately covered in DCIDs 1/7 and 1/19, but neither addresses the question of SCI access for contractor companies under foreign ownership, control or influence. Since the early 1970s when interest in ownership of U.S. companies by foreign interests became a security consideration, NFIB departments and agencies have independently developed and instituted policies as shown below:

a. The CIA Standard Security Procedures for Contractors, Paragraph 14g., dated 1 May 1979, states that:

"Corporations under foreign ownership, control or influence (FOCI) will not be considered for customer contracting or for storage of customer classified data or materials. A corporation shall be considered under foreign ownership, control or influence when any foreign investor has acquired a direct or indirect beneficial ownership interest of five percent or more of any class of stock in that corporation."

b. DoD Industrial Security Manual (DoD 5220.22M) of January 1979, Paragraph 21.c. states:

"Facilities which are determined to be under foreign ownership, control or influence (FOCI) are not eligible for a facility security clearance. Agreements with a foreign interest may make a contractor ineligible for a facility security clearance. Execution of a DD Form 441S [Certificate Pertaining to Foreign Interests]...is required in connection with a determination of the degree, if any, of FOCI."

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c. DoD 5220.22R, Paragraph 2-203c, outlines procedures for review as follows:

"The DLA-DD (CAS) will cause a review to be made of the case. Based upon the review, the DLA-DD (CAS) will make a determination as to whether the facility is under FOCI... However, in any case where there is reasonable doubt as to whether the degree of FOCI is such that a reasonable basis exists for concluding that compromise of classified information may result, the DLA-DD (CAS) shall forward the case with appropriate recommendations to DUSD (Policy Review), attention: /Director for Security, Plans and Programs/ DSP&P for final determination."

The manual includes extensive detail.

3. As stated above, the policies are inconsistent. Such inconsistency can cause problems for the community, particularly in joint endeavors where there could be disagreement as to the FOCI status of a vender. The inconsistency could also result in legal problems for the U.S. Government if one agency found a contractor eligible and another agency considered the firm to be ineligible for an SCI contract on the basis of foreign ownership.

4. A standard set of rules regarding foreign ownership and SCI contracting eligibility should benefit the U.S. Government. The following statement, adapted from Paragraph 108 of the APEX Security Policy Manual for Government, would provide the desired standardization and would not prevent an SIO imposing more restrictive criteria if desired:

Contractor companies under foreign ownership, control, or influence will generally be ineligible for access to SCI activities and information. However, a waiver of this provision may be granted, after review by the responsible SIO, if the following conditions apply: The foreign ownership, control, or influence does not involve a communist country; the foreign interests own less than five percent of the contractors voting stock; and such minority holdings do not enable the foreign interest to control the appointment and tenure of the contractor's government approved SCI managing officials. Before a waiver is granted, provision must be made to ensure that security safeguards exist to prevent disclosure of SCI-controlled information to any non-U.S. owners and managing officials. Should foreign ownership increase beyond five percent during the course of a contract, a review of the contractor's eligibility for continued access will be made.

5. Please provide in writing, by 10 April 1981, your agency's position on adoption of the proposed policy statement in paragraph 4 as DCI policy on FOCI in SCI contracting.



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